

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 INTEUM COMPANY LLC,

11 v.
12 Plaintiff,

13 NATIONAL UNIVERSITY OF SINGAPORE,

14 Defendant.

CASE NO. C17-1252-JCC

ORDER

15 This matter comes before the Court on Plaintiff's motion *in limine* to preclude testimony
16 by contemporaneous transmission from Singapore and Chicago (Dkt. No. 92) and Defendant's
17 cross-motion to permit testimony via contemporaneous video transmission and telephone (Dkt.
18 No. 97). Having thoroughly considered the parties' briefing and the relevant record, the Court
19 finds oral argument unnecessary and hereby GRANTS Plaintiff's motion and DENIES
20 Defendant's cross-motion for the reasons explained herein.

21 The Court has previously set forth the facts of this case and will not repeat them here.
22 (See Dkt. No. 101.) Defendant intends to present testimony at trial of three of its employees,
23 located in Singapore, and an employee of Wellspring Worldwide Inc. ("Wellspring"), located in
24 Chicago. (Dkt. No. 97 at 2.) Defendant seeks permission to present the testimony of the
25 Singapore witnesses via contemporaneous video transmission from Singapore and to present
26 brief testimony by Wellspring's employee via telephone from Chicago. (*Id.*) Plaintiff moves to

1 preclude Defendant from offering testimony by contemporaneous transmission, either by
2 videoconference or telephone. (Dkt. No. 92.)

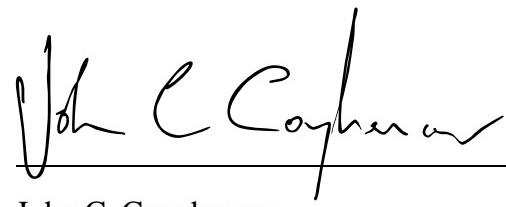
3 Generally, a witness's trial testimony "must be taken in open court . . ." Fed. R. Civ. P.
4 43(a). "For good cause in compelling circumstances and with appropriate safeguards, the court
5 may permit testimony in open court by contemporaneous transmission from a different location."
6 *Id.* "The most persuasive showings of good cause and compelling circumstances are likely to
7 arise when a witness is unable to attend trial for unexpected reasons, such as accident or illness,
8 but remains able to testify from a different place." Fed. R. Civ. P. 43 advisory committee's note
9 to 1996 amendment. But "[a] party who could reasonably foresee the circumstances offered to
10 justify transmission of testimony will have special difficulty in showing good cause and the
11 compelling nature of the circumstances." *Id.*

12 Under the 2012 License Agreement between the parties, "[i]n the event of any dispute,
13 [Defendant and Plaintiff] agree to jurisdiction and venue in the Federal or State Courts of King
14 County, Washington, USA." (Dkt. No. 92 at 22.) In support of its request to conduct testimony
15 by contemporaneous transmission, Defendant cites the costs it will incur if the Singapore- and
16 Chicago-based witnesses have to travel to Seattle to testify. (Dkt. No. 97 at 6–9.) But under the
17 2012 License Agreement, Defendant was aware that venue would be in King County,
18 Washington in the event of a dispute. (Dkt. No. 92 at 22.) Therefore, Defendant, as a Singapore-
19 based institution, was aware of the likely burdens it would bear if a dispute arose and it had to
20 defend itself in King County, and such costs do not constitute good cause and compelling
21 circumstances sufficient to justify allowing testimony via contemporaneous transmission.
22 Therefore, Plaintiff's motion *in limine* to preclude testimony by contemporaneous transmission
23 either by videoconference or telephone (Dkt. No. 92) is GRANTED and Defendant's cross-
24 motion to permit testimony by contemporaneous transmission (Dkt. No. 97) is DENIED.

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2 DATED this 12th day of March 2019.
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7 John C. Coughenour
8 UNITED STATES DISTRICT JUDGE
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